

# BANKS AND BANKING

## CHAPTER 76

### SENATE BILL NO. 2101

(Industry, Business and Labor Committee)  
(At the request of the Department of Financial Institutions)

AN ACT to create and enact section 6-06-14.1 of the North Dakota Century Code, relating to credit union loans; to amend and reenact subsection 3 of section 6-01-01.1, sections 6-01-04.3, 6-01-09, and 6-01-17, subsection 1 of section 6-03-05, sections 6-03-11, 6-03-13.3, and 6-03-15.1, subsection 1 of section 6-03-47.2, sections 6-03-49.1, 6-05-15.4, and 6-06-06, subsection 4 of section 6-06-08, and sections 6-06-11 and 6-08-08.1 of the North Dakota Century Code, relating to the regulatory fund, assessment of civil money penalties, appointment of receivers, supervision and examinations, assessments, real estate loans, bank mergers, bank branches, bank investments, trust branches, credit union powers, credit union board notice, and sale or purchase of banking institutions or holding companies; to repeal section 6-06-14 of the North Dakota Century Code, relating to credit union loans; to provide a penalty; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 3 of section 6-01-01.1 of the North Dakota Century Code is amended and reenacted as follows:

3. Any cash balance in the financial institutions regulatory fund after all current biennium expenditures are met must be carried forward in the financial institutions regulatory fund for the next succeeding biennium. ~~The balance in this fund at the end of the current biennium, excluding fees collected for use in the next succeeding biennium, may not exceed twenty percent of the department's next succeeding biennial budget.~~

**SECTION 2. AMENDMENT.** Section 6-01-04.3 of the North Dakota Century Code is amended and reenacted as follows:

#### **6-01-04.3. Assessment of civil money penalties.**

1. The commissioner or the board may assess a civil money penalty against a financial institution, financial corporation, or credit union, or an officer, director, employee, agent, or person participating in the conduct of the affairs of the financial corporation, financial institution, or credit union upon finding one or more of the following:
  - a. Failure to comply with a permanent or temporary cease and desist order that has been voluntarily consented to or issued pursuant to section 6-01-04.2;
  - b. Failure to comply with a final order that has been voluntarily consented to or issued following formal proceedings under chapter 28-32;

- c. Payment of dividends in violation of section 6-03-36;
  - d. Loans and leases to one borrower or concern which exceed the limitations set forth in sections 6-03-59 and 6-03-59.1;
  - e. Loans to directors, officers, and employees in violation of section 6-03-60;
  - f. The intentional filing of inaccurate or misleading call reports required by section 6-03-70 or 6-06-08;
  - g. Violations of loan limitations under subsection 1 of section 6-06-12 or ~~North Dakota Administrative Code section 13-03-16-03, 13-03-16-05, or 13-03-16-08~~ title 12, chapter 7, Code of Federal Regulations, subchapter A, part 723, as amended February 5, 2019;
  - h. Loans in violation of section ~~6-06-14 or subsection 2 of section 13-03-16-02 of the North Dakota Administrative Code or subsection 2 of section 13-03-16-05 of the North Dakota Administrative Code~~ 6-06-14.1; or
  - i. Failure to file notice of change of control under section 6-08-08.1.
2. The commissioner or the board commences administrative proceedings to assess civil money penalties by serving a complaint on the respondent stating the factual basis for the commissioner's or board's belief that a violation has occurred and the amount of civil penalties that the complaint seeks to impose. The complaint must contain a notice of an opportunity for an administrative hearing conducted under chapter 28-32. The date for the hearing must be set not less than thirty days after the date the complaint is served upon the respondent. If assessment of civil money penalties are proposed based on conditions described in subdivisions c through i of subsection 1, a complaint may not be filed unless the respondent has been provided with prior orders, examination reports, or other written communications, and has willfully refused to take corrective action that the respondent was capable of taking at the time.
  3. If the respondent fails to answer the complaint within twenty days of its service, the commissioner or board may enter an order imposing civil money penalties upon the respondent. If a hearing is held and the board concludes that the record so warrants, the board may enter an order imposing civil money penalties upon the respondent. The assessment order is effective and enforceable immediately upon service or upon a date specified in the order, and remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of the board or a reviewing court.
  4. In determining the amount of civil penalty imposed, the commissioner or board shall consider whether good faith was exercised, and the gravity of the violation and any previous violations. The commissioner or board may not impose a civil money penalty in excess of ~~five~~ one hundred thousand dollars for each occurrence and ~~one hundred thousand~~ one hundred thousand dollars per day for each day that the violation continues after service of an order. Any civil money penalties collected under this section must be paid to the department of financial institutions and deposited in the financial institutions regulatory fund.

**SECTION 3. AMENDMENT.** Section 6-01-09 of the North Dakota Century Code is amended and reenacted as follows:

### **6-01-09. Supervision and examination by commissioner of financial institutions.**

The commissioner shall exercise a constant supervision over the business affairs of all financial corporations, financial institutions, and credit unions, including all out-of-state branches of financial corporations, financial institutions, and credit unions. Either the commissioner or one or more examiners shall ~~visit~~ examine each financial institution ~~at least once each thirty-six months to examine its~~ assess the affairs of the institution and ascertain ~~its~~ the institution's financial condition. The commissioner shall inspect and verify the assets and liabilities of the institution and branches to ascertain with reasonable certainty that the value of the assets and the amounts of the liabilities are correctly carried on its books. The commissioner shall examine the validity of mortgages held by savings institutions and shall see that all of the mortgages are properly recorded. The commissioner shall investigate the method of operation and conduct of the corporations and institutions and their systems of accounting to ascertain whether the methods conform to the law and sound banking usage and principles. The commissioner shall inquire into and report any infringement of the laws governing those corporations and institutions, and for that purpose the commissioner may examine the officers, agents, and employees of the corporations and institutions and all persons doing business therewith. The commissioner may examine, or cause to be examined, or review the books and records of any subsidiary corporation of a bank or credit union service organization of a credit union under the commissioner's supervision and may require the bank to provide information on the holding company that owns the bank. The commissioner may also examine, or cause to be examined, or review the books and records of any technology service provider that provides services to financial corporations, credit unions, and financial institutions under the commissioner's supervision, to evaluate that entity's risk management systems and controls and compliance with applicable laws that affect such services provided to financial corporations, credit unions, and financial institutions. The commissioner shall report the condition of the corporations and institutions, together with the commissioner's recommendations or suggestions in connection therewith, to the state banking board, state credit union board, or both, and the ~~board~~ boards may take such action as the exigencies may demand.

**SECTION 4. AMENDMENT.** Section 6-01-17 of the North Dakota Century Code is amended and reenacted as follows:

### **6-01-17. ~~Yearly assessment~~ Semiannual assessments of banks and interstate branches.**

Every state banking association and banking institution under the jurisdiction and control of the commissioner and the commissioner's deputy examiners by this title, including the Bank of North Dakota and every branch of an out-of-state state bank, shall pay a ~~yearly assessment~~ semiannual assessment. This assessment is to be determined by the state banking board as necessary to fund that portion of the department's budget relating to the regulation of state-chartered banks and branches of out-of-state state banks, including the authority to enter into cooperative fee sharing agreements and assessment of associated travel costs with other state bank supervisors. ~~Assessment fees may not be computed on the combined assets of the bank and its trust department for those banks and branches exercising trust powers. Fees for the examination of the trust department must be computed in accordance with section 6-05-28. The assessment must be paid to the department of financial institutions within thirty days of each June thirtieth and December thirty-first. Institutions and branches that have not been examined by the commissioner or the state banking board for three years prior to any assessment date shall not be required to pay the assessment.~~ If any such corporation or institution or branch is delinquent

more than twenty days in making such payment, the board ~~may make an order suspending the functions~~ may seek other administrative remedies of such delinquent corporation, institution, or branch until payment of the amount due. The commissioner may assess a penalty of ~~five dollars~~ one percent of the outstanding assessment fee for each day that the assessment fee is delinquent. All fees and penalties under this section must be deposited with the state treasurer and deposited in the financial institutions regulatory fund.

**SECTION 5. AMENDMENT.** Subsection 1 of section 6-03-05 of the North Dakota Century Code is amended and reenacted as follows:

1. Before any real estate loan equal to or more than ~~two~~four hundred ~~fifty~~ thousand dollars is made, an appraisal must be conducted by a licensed or certified appraiser if required by the federal Financial Reform, Recovery, and Enforcement Act of 1989 [Pub. L. 101-73; 103 Stat. 512; 12 U.S.C. 3332 et seq.].

**SECTION 6. AMENDMENT.** Section 6-03-11 of the North Dakota Century Code is amended and reenacted as follows:

**6-03-11. Conversion, consolidation, or merger.**

Any two or more banking institutions upon making application to the ~~commissioner or the~~ state banking board may consolidate or merge if authorized by the ~~commissioner or~~ board into one banking institution under the charter of either existing banking institution on such terms and conditions as lawfully may be agreed upon by a majority of the board of directors of each banking institution proposing to consolidate or merge subject to rules adopted by the state banking board. Before becoming final, such consolidation or merger must be ratified and confirmed by the vote of the shareholders of each such banking institution owning at least two-thirds of its capital stock outstanding at a meeting to be held on the call of the directors. Notice of such meeting and of the purpose thereof must be given to each shareholder of record by registered or certified mail at least ten days prior to the meeting. The shareholders may unanimously waive such notice and may consent to such meeting and consolidation or merger in writing. The capital stock and surplus of such consolidated banking institution must not be less than that required under this title for the organization of a banking institution of the class of the largest consolidating banking institution. Immediately after the consolidation or merger a full report thereof, including a statement of the assets and liabilities of the consolidated banking institution, must be made to the commissioner by the surviving banking institution. Any banking institution may without approval by any state authority convert into or merge or consolidate with a national banking association as provided by federal law. A national bank proposing to merge into a state-chartered bank shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for such examination at an hourly rate sufficient to cover all reasonable expenses of the department of financial institutions associated with the examination. Fees must be collected by the commissioner and deposited in the financial institutions regulatory fund.

**SECTION 7. AMENDMENT.** Section 6-03-13.3 of the North Dakota Century Code is amended and reenacted as follows:

**6-03-13.3. Facts considered for approval.**

1. Whenever any bank desires to maintain and operate a facility separate and apart from its banking house, pursuant to section 6-03-13.1, or to move a

facility previously established to another location, it shall apply to the commissioner or the comptroller of the currency, as the case may be, for such authority and provide the commissioner with such relevant information as the commissioner may reasonably request. In determining whether to approve the application for such facility, the commissioner shall take into consideration the following facts:

1. a. The convenience, needs, and welfare of the people of the community and area served; and
2. b. The financial strength of the bank in relation to the cost of establishing and maintaining such separate facility.
3. ~~Whether other banks will be seriously injured by the approval of the application.~~

~~When considering an application for relocating an existing facility to another location within the same corporate city limits, the commissioner may consider only subsection 2 as a factor for approval.~~

2. Upon approval by the commissioner or state banking board of a merger application under section 6-03-11, the former main office and facilities of the banking institutions being merged will become facilities of the surviving banking institution and the banking institution is not required to file an application under this section.
3. If the commissioner's decision with respect to an application is unfavorable, the applicant bank may appeal the decision to the state banking board by filing a notice of appeal with the commissioner within twenty days after the commissioner has notified the applicant bank of the decision.

~~If an interested party files a protest with respect to an application, the matter will be referred to and decided by the state banking board.~~

**SECTION 8. AMENDMENT.** Section 6-03-15.1 of the North Dakota Century Code is amended and reenacted as follows:

**6-03-15.1. Temporary relocation of bank operations.**

In the event of an emergency or other temporary relocation, a bank may apply to shall notify the commissioner to relocate its main banking house or facility until the former location is repaired to allow bank operations to resume. No notice or public hearing need be held to act upon the temporary relocation request. The bank shall give the commissioner notice of the bank's decision to relocate promptly and in any case within three days in the event of an emergency, and at least thirty days prior for other temporary relocations. The notice must describe the bank's actions and the expected duration of the bank's relocation. Unless extended by the commissioner, a bank's authority to change the bank's location under this section may not exceed sixty days. Notice of the bank's intention to temporarily relocate must be provided to customers at least ten days before the relocation.

**SECTION 9. AMENDMENT.** Subsection 1 of section 6-03-47.2 of the North Dakota Century Code is amended and reenacted as follows:

1. Bonds, notes, or debentures of any corporation ~~rated at "A" or higher by a nationally recognized rating service approved by the commissioner, provided~~

that the lesser of the book value or face value of the investments at the time of purchase may not exceed for any one corporation twenty-five percent of the unimpaired capital and surplus of the banking association that have been rated in one of the four highest rating categories by a nationally recognized statistical rating organization registered with the securities and exchange commission. In the case of different ratings from different rating organizations, the lower rating applies. If a nationally recognized statistical rating organization has not rated the security, the bank shall determine that the security is the credit equivalent of a security rated in the four highest rating categories by a nationally recognized statistical rating organization. This includes documentation demonstrating that the issuer of the security has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure and the issuer has adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected. The aggregate par value of investments issued by any one corporation may not exceed twenty-five percent of unimpaired capital and surplus at the time of purchase.

**SECTION 10. AMENDMENT.** Section 6-03-49.1 of the North Dakota Century Code is amended and reenacted as follows:

**6-03-49.1. Bank investment in service corporation - Service corporation services and activities.**

1. Subject to the approval of the state banking board, any bank may invest not more than in a service corporation and provide services and activities through the service corporation, if:
  - a. The service corporation is a United States corporation and is organized as a bank service corporation having its principal place of business in the United States.
  - b. The investment in stocks, bonds, debentures, or other obligations does not exceed ten percent of paid-in and unimpaired capital and unimpaired surplus in stocks, bonds, debentures, or other obligations of any North Dakota corporation organized as a bank service corporation having its principal place of business in the state and in each corporation.
  - c. The service corporation is operated exclusively for the purpose of providing for such bank and one or more other banks, bank services which the banks would otherwise be required or permitted to provide for on an individual bank basis. The term bank services in this section includes services such as check:
    - (1) Check and deposit sorting and posting, computation,
    - (2) Computation and posting of interest and other credits and charges, preparation,
    - (3) Preparation and mailing of checks, statements, notices, and similar items, or any,
    - (4) Any other clerical, bookkeeping, accounting, statistical, or similar functions performed by a bank.

- (5) Owning and administering a credit card program for customers of banks.
- (6) Engaging in activities incidental to banking services.
- (7) Other activities that further or facilitate the corporate purposes of a bank or subsidiaries of a bank, if the services may be lawfully performed by both its national bank shareholders under the laws of the United States and its state bank shareholders under the laws of this state.

2. Payment for rent earned, goods sold and delivered, or services rendered prior to the making of the payment is not an investment under this subsection. A bank service corporation may be chartered under the laws of this state with shareholders limited to state and national banks located within the state and corporations that are organized as associations of state and national banks located within the state to provide all the services, except deposit taking, that all the banks that are its shareholders can offer directly to their own customers at any place in the state where they can offer their services, including owning and administering a credit card program for customers of banks and engaging in activities incidental to banking services and other activities that further or facilitate the corporate purposes of a bank or subsidiaries of a bank, so long as such services may be lawfully performed by both its national bank shareholders under the laws of the United States and its state bank shareholders under the laws of this state not accept deposits.

**SECTION 11. AMENDMENT.** Section 6-05-15.4 of the North Dakota Century Code is amended and reenacted as follows:

**6-05-15.4. Multiple offices or places of business - Application to state banking board - Hearing.**

1. A trust company may establish and maintain for itself and its operating subsidiary organizations one or more offices or places of business within this state, throughout the United States, in foreign countries, or in dependencies or insular possessions of the United States upon written application to the department of financial institutions for approval from the state banking board. Additional branches in the United States may be approved by the commissioner, while all other branches must be approved by the state banking board. The application must include the information specified by the board.
2. Notice of the application to establish and maintain an office or place of business must be published as required by the state banking board.
3. Within ten business days after receipt of the application by the department of financial institutions, the The commissioner shall determine if the application is complete and shall notify the trust company of the determination. If within the ten business days the commissioner determines the application is incomplete, the commissioner shall request the additional information necessary to complete the application. Within ten days after receipt of the additional information, the commissioner shall notify the trust company by mail of the commissioner's determination of completeness. Within sixty days after the date for the mailing of a notice of completeness by the commissioner, the The commissioner or state banking board either shall approve the application or shall notify the trust company that a hearing on the application will be required.

4. Any hearing required by the commissioner or state banking board must be commenced and concluded by issuance of thean order of the board within ninety days after the date for the mailing of a notice of completeness by the commissioner. If the hearing is not concluded within this ninety-day period, the application is deemed approved by the board.
5. The commissioner or state banking board may disapprove the application if it finds, after a hearingthe commissioner or board find:
  - a. The establishment and maintenance of the office or place of business will jeopardize the solvency of the trust company; or
  - b. The operation of more than one office or place of business by the trust company will place the company in an unsafe and unsound condition.
6. If a North Dakota chartered trust company desires to move a branch previously established to another location, the trust company shall apply to the commissioner for such authority and provide the commissioner with such relevant information as the commissioner may reasonably request.

**SECTION 12. AMENDMENT.** Section 6-06-06 of the North Dakota Century Code is amended and reenacted as follows:

**6-06-06. Powers of credit unions.**

A credit union has the following powers:

1. To receive the savings of its members either as payment on shares or as deposits, including the right to conduct Christmas clubs, vacation clubs, and other such thrift organizations within its membership.
2. To make loans to members.
3. To make loans to a cooperative society or other organization having membership in the credit union.
4. To deposit its moneys in financial institutions, trust companies, credit unions, corporate central credit unions, and the Bank of North Dakota authorized to receive deposits.
5. To invest in the following:
  - a. In bonds of the United States without limitation in securities issued as direct obligations by the United States government or any agency thereof and in any trust established for investing directly or collectively in such securities.
  - b. In bonds or evidences of debt of this state or in bonds of states of the United States.
  - c. In bonds or certificates of indebtedness of any county, city, or school district in this state, issued pursuant to authority of law, but not to exceed thirty percent of the assets of any credit union may be invested in such bonds or certificates of indebtedness.

- d. In notes or bonds secured by mortgage or deed of trust upon unencumbered, improved real estate in this state, if such investment does not exceed sixty-five percent of the market value of the property mortgaged, and fire and tornado insurance policies are maintained and deposited as collateral to such mortgage, subject to such restriction and regulations as may be imposed by the state credit union board.
  - e. In notes or bonds secured by a security interest or lien upon unencumbered personal property, if the investment does not exceed ninety percent of the market value of the property secured.
  - f. In first lien, public utility, industrial, corporation, or association bonds, notes, or other evidences of debt issued by corporations located in the United States of America to the extent authorized by the state credit union board.
  - g. Subject to rules of the state credit union board, in shares of investment companies registered under the Investment Companies Act of 1940 and which invest only in investments otherwise permissible under this section.
  - h. In investments or insurance products or in loans to the credit union employee associated with the investment or insurance product which are otherwise prohibited by this section if the investments are directly related to a benefit plan for credit union employees.
6. To borrow money as limited in this chapter.
  7. Subject to such regulations as the state credit union board may prescribe, insurance obtained under title 1 of the National Housing Act must be deemed adequate security.
  8. To sue and be sued.
  9. A credit union may invest in a credit union office building, including the lot, piece, or parcel of land on which the same is located, and in furniture and fixtures, to the extent authorized by regulations issued by the state credit union board.
  10. a. Every state credit union has the power to purchase, hold, and convey other real estate as herein provided, and not otherwise:
    - a-. (1) Such as is mortgaged to it in good faith by way of security for loans, or for debts previously contracted.
    - b-. (2) Such as is conveyed to it in good faith in satisfaction of debts previously contracted in the course of its dealings.
    - e-. (3) Such as it purchases at sales under judgments, decrees, or mortgages held by the credit union, or purchases to secure debts due to it.

~~Within sixty days of the~~

- b. Upon transfer to other real estate owned, a current appraisal must be conducted by a state-licensed an individual who is independent of the ~~transaction for all real estate recorded at or above one hundred thousand~~

dollars or through a market evaluation performed by a qualified individual who is independent of the transaction for all real estate recorded below one hundred thousand dollars. Except as otherwise provided by chapter 10-06.1, a state credit union may hold possession of any real estate acquired after July 1, 1991, under mortgage, or title and possession of any real estate purchased to satisfy indebtedness, for a period not to exceed five years. Except as otherwise provided by chapter 10-06.1, real estate acquired before July 1, 1991, may be held for a period not exceeding five years from July 1, 1991. The commissioner may extend the real estate holding period up to an additional five years upon formal request by a credit union if the credit union has made a good-faith attempt to dispose of the real estate within the five-year period, or disposal within the five-year period would be detrimental to the credit union. Within thirty days after receipt of an adverse decision, the credit union may appeal that decision to the state credit union board.

c. Notwithstanding other sections of this chapter, a credit union may apply to the commissioner for authority to exchange its interest in real property acquired in satisfaction of a debt previously contracted for an interest in an entity that would dispose of the real property. If the commissioner's decision with respect to an application is unfavorable, the applicant credit union may appeal the decision to the state credit union board by filing a notice of appeal with the commissioner within twenty business days after the commissioner has notified the applicant credit union of the decision.

11. Subject to authorization by the state credit union board, acting by order or rule, a state credit union has the same powers as a federal credit union and may engage in any activity in which a credit union could engage if the credit union were federally chartered.
12. To exercise any incidental power necessary or requisite to enable the credit union to carry out effectively the business for which it is incorporated or as determined by the board by order or rule.

**SECTION 13. AMENDMENT.** Subsection 4 of section 6-06-08 of the North Dakota Century Code is amended and reenacted as follows:

4. Every state credit union, ~~including any "corporate central" or "corporate" credit union,~~ placed under the jurisdiction and control of the state credit union board and the commissioner by the provisions of this title shall pay a ~~yearly~~semiannual assessment. This assessment is to be determined by the state credit union board as necessary to fund that portion of the department's budget relating to the regulation of state-chartered credit unions. The assessment must be paid to the state treasurer within thirty days of each June thirtieth and December thirty-first. ~~Credit unions that have not been examined by the commissioner or the state credit union board for three years prior to any assessment date are not required to pay the assessment.~~ The state treasurer shall report the payments of fees to the commissioner, and if any credit union is delinquent more than twenty days in making payment, the board may make an order suspending the functions of the delinquent credit union seek other administrative remedies until payment of the amount due. The commissioner may assess a penalty of ~~five dollars~~one percent of the outstanding assessment fee for each day that the penalty is delinquent. ~~The examination fee for any "corporate central" or "corporate" credit union shall be charged by the department at an hourly rate to be set by the commissioner,~~

~~sufficient to cover all reasonable expenses of the department associated with the examination. All fees and penalties under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.~~

**SECTION 14. AMENDMENT.** Section 6-06-11 of the North Dakota Century Code is amended and reenacted as follows:

**6-06-11. Annual meetings - Election of directors - Election or appointment of committees.**

1. The organization meeting of the members of a credit union shall be the first annual meeting. At its annual meeting, its members shall elect a board of directors of not less than five members and a credit committee of not less than three members, unless the bylaws of the credit union provide that the credit union may not have a credit committee. A supervisory committee of not less than three members must be elected at the annual meeting, unless the bylaws of the credit union provide that the supervisory committee members be appointed by the board of directors of the credit union or the bylaws provide that the credit union may not have a supervisory committee. In the event the bylaws do not provide for a supervisory committee, then the duties and powers of a supervisory committee, as described in section 6-06-15, are the responsibility of the board of directors. The directors and committee members if any, shall hold office for such terms, respectively, as provided by the bylaws of the credit union and until their successors qualify. A record of the names and addresses of the officers and members of the board and committees must be filed with the commissioner within ten days after their election or appointment. Notice of any change in membership on the board or committees by appointment to fill an unexpired term or otherwise must be filed with the commissioner within ten days of such change. The notice requirement is satisfied if the national credit union association's call report profile is updated within the ten-day reporting requirement.
2. If the bylaws of the credit union provide for a credit committee, then pursuant to the provisions of the bylaws, the board of directors may appoint or the members may elect a credit committee which consists of an odd number of members of the credit union, but which may not include more than one loan officer. The method used must be set forth in the bylaws.
3. If the credit committee is dispensed with in the bylaws, a credit manager, under the general supervision of the board of directors, may be empowered to approve or disapprove loans subject to the policies and conditions prescribed by the board of directors. The president or other qualified senior management official may serve as the credit manager. If a credit manager is provided in lieu of an elected credit committee, the credit manager may appoint one or more loan officers with the power to approve or disapprove loans, and may establish an internal credit committee comprised of designated credit union staff with the power to approve or disapprove loans, subject to such limitations or conditions as the credit manager and board of directors prescribes.

**SECTION 15. AMENDMENT.** Section 6-08-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**6-08-08.1. Sale or purchase of associations, banking institutions, or holding companies - Notification to commissioner - Hearing.**

1. No person, acting directly or indirectly or through or in concert with one or more other persons, may purchase or otherwise acquire control of an association or banking institution unless the state banking board or commissioner has been given prior written notice by application of the proposed disposition or acquisition. The written application must include such information as the state banking board shall specify. The transaction may not be consummated before the board or commissioner has granted approval.
2. The applicant shall publish notice of the application as required by the board by rule.
3. ~~Within ten business days after the date the application is received, the~~The commissioner shall determine if the application is complete and notify the applicant ~~by mail~~ of the determination. If the commissioner determines the application is incomplete, the commissioner will, ~~within the ten business days, shall~~ request additional information deemed necessary to complete the application. ~~Within ten business days after the receipt of the additional information, the commissioner will notify the applicant by mail of the commissioner's determination of completeness. Within sixty days, or the next regularly scheduled meeting of the board, after the mailing of a notice of completeness by the commissioner, the board must either approve or disapprove the application.~~
4. ~~The~~If not approved by the commissioner, the commissioner shall submit the application to the board. The board may approve or disapprove anythe application if the board determines that:
  - a. The character, reputation, general fitness, financial standing, and responsibility of the persons proposed as new stockholders, directors, or officers is such that the interests of the other stockholders, depositors, and creditors of the institution and the public generally will be jeopardized by the change in control and management.
  - b. The qualifications of management do not include adequate experience with financial institutions or other approved related experience.
5. Within three business days after the board's decision to disapprove an application, the board shall notify the applicant in writing of the disapproval. The notice must provide a statement of the basis for the disapproval.
6. Within twenty days after receipt of the notice of disapproval, the applicant may request a hearing on the disapproval. The board must conduct a hearing, if requested, under the provisions of chapter 28-32. At the conclusion of the hearing, the board shall by order approve or disapprove the application on the basis of the record at the hearing.
7. For purposes of this section, "control" means ownership or control, directly, indirectly, or through the actions of one or more persons of the power to vote twenty-five percent or more of any class of voting securities of an association, banking institution, controlling bank holding company, or the direct or indirect power to control in any manner the election of a majority of the directors of an association or banking institution, or to direct the management or policies of an association or banking institution, whether by individuals, corporations, limited liability companies, partnerships, trusts, or other entities or organizations of any type.

8. The following acquisitions of voting securities of a North Dakota state chartered bank, which would otherwise require submission of an application under this section, are not subject to the application requirements if the acquiring person notifies the commissioner within ninety days after the acquisition and provides any relevant information requested by the commissioner: acquisition of voting securities through inheritance; acquisition of voting securities as a bona fide gift; and acquisition of voting securities in satisfaction of a debt previously contracted in good faith. This subsection does not limit the authority of the commissioner to require a party to submit a written application to the board under subsection 1.

**SECTION 16.** Section 6-06-14.1 of the North Dakota Century Code is created and enacted as follows:

**6-06-14.1. Loans - How made - Security - Meetings and duties of loan administration - Preferential loans.**

1. The duty of loan administration falls to the credit committee if the bylaws establish a credit committee, or to the credit manager appointed by the board of directors if the bylaws do not provide for a credit committee. At a minimum, loan administration must include:
  - a. Oversight over all loans.
  - b. Performance of loan-related duties as often as necessary, and in the case of a credit committee, a meeting at least once each month. Each member of the credit committee must receive prior notice of the time and location of a meeting.
  - c. Loan applications, notes, security instruments, and all other loan documentation necessary to execute the transaction on forms approved by the committee or credit manager which set forth the purpose for which the loan is desired, the security, if any, which is offered, and such other data as the committee or credit manager may require.
  - d. Documentation that the loan complies with board of directors-approved loan policies, including policy limits on the maximum unsecured loans to one borrower and the limit on maximum total loans to a borrower.
  - e. Documented approval or denial of the loan by the majority of the entire credit committee or by the credit manager, except that the credit committee or credit manager may appoint and delegate to one or more loan officers the power to approve loans up to the limit established by the board of directors.
  - f. Sufficient segregation of duties to limit risk or error if possible. At a minimum, an individual may not disburse funds of the credit union for any loan that has been approved by that individual in that individual's capacity as a loan officer.
2. Not more than one member of the credit committee may be appointed as a loan officer, unless credit union bylaws provide for a board of directors-appointed credit manager and the credit committee is made up of credit union employees appointed by the credit manager.

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3. Every loan by a credit union to, or guaranteed by, its directors, officers, managers, and committee members must:
    - a. Be current as outlined on the terms of the loan agreement.
    - b. Be made on substantially the same terms, including interest rates, fee structure, and collateral, as those prevailing at the time for comparable transactions with other persons.
    - c. Be written in strict conformity with the credit union's policies, rules, and regulations.
  4. An exception may be made for a loan otherwise prohibited by this section if the loan is directly related to a retirement investment benefit plan for credit union employees.

**SECTION 17. REPEAL.** Section 6-06-14 of the North Dakota Century Code is repealed.

**SECTION 18. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 12, 2021

Filed April 13, 2021

## CHAPTER 77

### SENATE BILL NO. 2102

(Industry, Business and Labor Committee)  
(At the request of the Department of Financial Institutions)

AN ACT to create and enact chapter 6-07.2 of the North Dakota Century Code, relating to dissolution, insolvency, suspension, emergency receivership, and liquidation of institutions under the department of financial institutions' supervision; to amend and reenact subsection 4 of section 6-01-04.2 and sections 6-01-04.4, 6-02-05, 6-03-12, 6-03-57, 6-03-67, 6-05-34, and 6-06-08.4 of the North Dakota Century Code, relating to financial institutions cross references, cease and desist orders, and prompt corrective action; and to repeal chapter 6-07 of the North Dakota Century Code, relating to dissolution, insolvency, suspension, emergency receivership, and liquidation of institutions under the department of financial institutions' supervision.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 4 of section 6-01-04.2 of the North Dakota Century Code is amended and reenacted as follows:

4. The commissioner or the board may enter an emergency, temporary cease and desist order if the commissioner or the board finds the conduct described in the complaint is likely to cause insolvency, substantial dissipation of assets, earnings, or capital of the financial corporation, financial institution, or credit union, or substantial prejudice to the depositors, shareholders, members, or creditors of the financial corporation, financial institution, or credit union. An emergency, temporary cease and desist order is effective immediately upon service on the financial corporation, financial institution, or credit union and remains in effect for no longer than sixty days or until the conclusion of permanent cease and desist proceedings pursuant to this section, whichever is sooner. An emergency, temporary cease and desist order may be issued without an opportunity for hearing. The financial corporation, financial institution, or credit union upon which such an order is served may apply to the district court of the county in which the financial corporation, financial institution, or credit union is located for an order enjoining the operation of the emergency, temporary order. The application for injunction and procedure upon application must comply with the requirements of section 6-07-14A bank or credit union may request a hearing before the state banking board or state credit union board within ten days of the order to review the factual basis used to issue the emergency, temporary cease and desist order. The decision made by the board during this hearing will be final. If a hearing is not requested, the initial decision of the commissioner or board will be final.

**SECTION 2. AMENDMENT.** Section 6-01-04.4 of the North Dakota Century Code is amended and reenacted as follows:

#### **6-01-04.4. Prompt corrective action.**

The commissioner or board may enter an order if the commissioner or board finds that a state bank is undercapitalized, significantly undercapitalized, or critically

undercapitalized. For the purpose of this section, undercapitalized, significantly undercapitalized, and critically undercapitalized have the same definition as found in title 12, Code of Federal Regulations, part 324, section 403, as amended April 15, 2016. The order may require an undercapitalized state bank to take prompt corrective action as the commissioner or board determines reasonable to bring the bank to an adequately capitalized condition, including the submission and implementation of an acceptable capital restoration plan. A bank may request a hearing before the state banking board within ten days of the order to review the factual basis used to issue the request for prompt corrective action. The decision made by the board during this hearing is final. If a hearing is not requested, the initial decision of the commissioner or board is final. For a significantly or critically undercapitalized state bank, the commissioner or board may issue a temporary cease and desist order appointing a receiver, or with the consent of the federal deposit insurance corporation appoint a conservator or take such other action as may be better to resolve the problems of the state bank consistent with section 38 of the Federal Deposit Insurance Act of 1991 [Pub. L. 102-242; 105 Stat. 2253; 12 U.S.C. 1831o et seq.], in effect on July 22, 2010. A bank that has been served with a complaint requesting the state banking board to issue a prompt corrective action under this section may request a hearing before the board within five days after service of the complaint upon the bank. A request for a hearing must be granted and the hearing must be held not later than ten days after the request is filed with the board. A complete record of the hearing must be established and maintained. On the basis of the hearing, the board may issue an order. The bank may appeal the board's order under this section to the district court of Burleigh County, North Dakota, within ten days after the board's order is served on the bank. The appeal is governed by chapter 28-32 in accordance with chapter 6-07.2.

**SECTION 3. AMENDMENT.** Section 6-02-05 of the North Dakota Century Code is amended and reenacted as follows:

**6-02-05. Acknowledgment of organization certificate - Application for certificate of authority - Notice of hearing.**

The organization certificate must be acknowledged before a notary public, and, ~~together with the acknowledgment thereof, the acknowledged certificate~~ the authenticated certificate must be authenticated by the seal of the notary. The ~~same thereupon~~ authenticated certificate must be transmitted to the state banking board with a request for permission to present the same to the secretary of state, with application for the issuance of a certificate of authority. Upon receiving such organization certificate, the board shall cause notice of the application ~~therefor~~ to be published in the official newspaper of the county within which such association is proposed to be established. ~~Such~~ The notice must contain a statement of a time when and place where the board will hear ~~such~~ the application and must specify that any person objecting ~~thereto~~ the application may appear and show cause why such application should not be approved. Upon the consolidation of banks, acquisition pursuant to ~~section 6-07-04.2~~ chapter 6-07.2, or the conversion of a national bank to a state bank, notice of such hearing need not be given.

**SECTION 4. AMENDMENT.** Section 6-03-12 of the North Dakota Century Code is amended and reenacted as follows:

**6-03-12. Transfer of assets on consolidation or merger.**

All of the rights, property, franchises, and interests of the consolidating or merging bank or trust company are deemed to be transferred to and vested in the bank or trust company into which it is consolidated or merged without other instrument of transfer.

The consolidated bank or trust company shall hold and enjoy the same and all rights, property, franchises, and interests in the same manner and to the same extent as were held and enjoyed by the bank or trust company so consolidated or merged therewith, including the holding and performing by any bank or trust company of any and all trust and fiduciary relations whatsoever as to and for which either or any of the banks or trust companies so consolidating or merging may have been appointed, nominated, or designated by any will, agreement, conveyance, or otherwise, whether or not such trust or fiduciary relationship has come into being or has taken effect at the time of the consolidation or transfer. The merging bank or trust company, however, shall transfer all of its real property to the consolidated bank or trust company by good and sufficient deed of conveyance, and for that and other purposes, it remains a body corporate until dissolved in the manner provided in chapter ~~6-076-07.2~~, or if no assets or liabilities remain, until the certificate is canceled by the secretary of state.

**SECTION 5. AMENDMENT.** Section 6-03-57 of the North Dakota Century Code is amended and reenacted as follows:

**6-03-57. Foreclosure of pledge contracts.**

Except as otherwise provided in chapter ~~6-076-07.2~~, no pledge made by an association may be foreclosed except by an action in equity brought in the district court of the county in which the pledgor association is located, except where assets are pledged by a state banking association in order to secure borrowed money or the obligation of the association on rediscounted paper, the rights of the pledgee must be determined by the terms of the agreement of pledge, and if the pledged assets are outside of this state, the foreclosure of the pledge is governed by the laws of the state where the pledge is located.

**SECTION 6. AMENDMENT.** Section 6-03-67 of the North Dakota Century Code is amended and reenacted as follows:

**6-03-67. Appropriation of deposits unlawful - Exception - Liability therefor.**

Except as provided in sections ~~6-07-526-07.2-09~~ and 30.1-31-20, it is unlawful for any banking association to charge any claim which it might have, or the claim of any other person, against a deposit made with the association, or to appropriate a deposit or any part of the deposit to the payment of any debt to the association, without legal process or the consent of the depositor. Any banking association that violates this section is liable to the party aggrieved for any damages caused by the violation.

**SECTION 7. AMENDMENT.** Section 6-05-34 of the North Dakota Century Code is amended and reenacted as follows:

**6-05-34. Other code provisions applicable to corporations doing business under this chapter.**

The provisions of title 10, as it may be amended from time to time, governing profit corporations, and sections 6-01-06, 6-01-09, 6-03-11, 6-03-12, 6-03-27, 6-03-33, 6-03-34, 6-03-35, 6-03-41, 6-03-42, 6-03-51, 6-03-52, 6-03-53, 6-03-54, 6-03-55, 6-03-56, 6-03-57, 6-03-58, 6-03-61, 6-03-62, 6-03-63, 6-03-64, 6-03-65, 6-03-70, 6-03-72, ~~6-07-01, 6-07-02, 6-07-04, 6-07-05, 6-07-06~~ chapter 6-07.2, sections 6-08-03, 6-08-06, 6-08-09, 6-08-14, and 6-08-20 are applicable to and must be observed by all corporations organized under this chapter, except as to provisions thereof inconsistent with the provisions of this chapter.

**SECTION 8. AMENDMENT.** Section 6-06-08.4 of the North Dakota Century Code is amended and reenacted as follows:

**6-06-08.4. Prompt corrective action.**

1. For purposes of this section, the net worth categories are defined as:
  4. a. Well capitalized. A credit union with a net worth ratio of seven percent or greater which meets any applicable risk-based net worth requirement.
  2. b. Adequately capitalized. A credit union with a net worth ratio six percent or more but less than seven percent which meets any applicable risk-based net worth requirement as defined by the state credit union board by rule.
  3. c. Undercapitalized. A credit union with a net worth ratio of four percent or more but less than six percent or fails to meet any risk-based net worth requirement.
  4. d. Significantly undercapitalized. A credit union with a net worth ratio of two percent or more but less than four percent, fails to increase its net worth, or fails to submit or materially implement a net worth restoration plan.
  5. e. Critically undercapitalized. A credit union with a net worth ratio less than two percent.
2. A credit union may be reclassified into the next subordinate net worth category by the commissioner or the state credit union board if it is determined that the credit union is in an unsafe or unsound condition or has not corrected unsafe or unsound practices of which it was, or should have been, aware. The board or commissioner may ~~require~~order a credit union that is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized to take prompt corrective action to increase its~~the credit union's~~ net worth. Additionally, the ~~board or commissioner~~order may require a credit union that is undercapitalized, significantly undercapitalized, or critically undercapitalized to submit an acceptable net worth restoration plan to the commissioner. A credit union may request a hearing before the state credit union board within ten days of the order to review the factual basis used to issue the request for prompt corrective action. The decision made by the board during this hearing is final. If a hearing is not requested, the initial decision of the commissioner or board is final. For a significantly undercapitalized credit union that has no reasonable prospect of becoming adequately capitalized or a critically undercapitalized credit union, the commissioner or board may take possession of the credit union; or appoint a conservator or liquidating agent for the credit union; ~~or take such other action as the board determines would be appropriate to resolve the problems of the credit union.~~

~~A credit union that is the subject of such a board declaration may ask for a hearing before the board within five days after service upon it of the board's declaration. The application for a hearing must be granted and the hearing must be held not later than ten days after the application is filed. A complete record of the hearing must be established and maintained. On the basis of the hearing, the board shall enter a final order. The institution may appeal the order to the district court of Burleigh County, within ten days after the order is served upon it. The appeal is governed by chapter 28-32 in accordance with chapter 6-07.2.~~

**SECTION 9.** Chapter 6-07.2 of the North Dakota Century Code is created and enacted as follows:

**6-07.2-01. Department taking possession - Procedure.**

1. The commissioner may take possession of the business and property of an institution the commissioner supervises if it appears to the commissioner that any of the following conditions exist:
  - a. The directors or officers of the institution, or the liquidators of the institution subject to a voluntary plan of liquidation, have neglected, failed, or refused to take action the commissioner deems necessary for the protection of the institution.
  - b. The directors, officers, or liquidators of the institution have impeded or obstructed an examination. This may include concealment or refusal to submit books, papers, records, or affairs of the institution for inspection to any examiner or to any lawful agent of the appropriate federal financial institution regulatory agency or of the department.
  - c. The business is being conducted in a fraudulent, illegal, or unsafe manner.
  - d. The institution is conducting business in a way causing losses to depositors.
  - e. The institution is operating in an unsafe or unsound condition.
  - f. The capital of the institution is impaired such that the likely realizable value of the institution's assets is insufficient to pay and satisfy the claims of all depositors and all creditors.
  - g. The institution is insolvent or in imminent danger of insolvency or has suspended ordinary business transactions of the institution due to insufficient funds.
  - h. The institution has refused or been unable to pay deposits or obligations in accordance with the terms under which those deposits or obligations of the institution were incurred.
  - i. Substantial dissipation of assets or earnings due to:
    - (1) Any violation of any law or rule; or
    - (2) An unsafe or unsound practice.
  - j. The institution is unable to continue operations.
  - k. The institution is in violation of any applicable state or federal regulation.
  - l. Neglect or refusal to comply with the terms of a final order of the department, state banking board, state credit union board, or federal financial institution's regulatory agency essential to preserve the solvency of the institution.
  - m. The institution has failed to pay the fees charged by the department under section 6-01-17 after due notice of the amount of the fee has been given.

- n. The institution's board of directors requests that the department take possession for the benefit of depositors, other creditors, shareholders, or other persons.
  - o. The institution has been advised by the federal deposit insurance corporation of the federal deposit insurance corporation's intention to withdraw deposit insurance coverage.
  - p. The institution has been advised by the national credit union association of the national credit union association's intention to withdraw share insurance coverage.
  - q. The directors or officers of the bank, or the liquidators of a bank subject to a voluntary plan of liquidation, have assumed duties or performed acts in excess of those authorized by applicable statutes or regulations, by the bank's organizational documents or plan of liquidation, or without supplying the required bond.
2. If it appears to the commissioner one or more of the conditions in this section exists as to any institution, the commissioner shall cause a notice to be served on the president or other executive officer in charge of the institution and, pursuant to such notice, take possession of the business, property, and records of the institution from the officer citing the reasons for such a demand from this section. The decision of the commissioner is final upon the president or other executive officer's receipt of the notice and the institution immediately shall surrender possession to the commissioner.

#### **6-07.2-02. When possession terminates.**

If the commissioner has taken possession of the business and property of an institution under the provisions of section 6-07.2-01, the commissioner shall hold possession of the business and property until the affairs of the institution have been finally liquidated as provided in this chapter, unless the institution has undertaken the voluntary liquidation of the affairs of the institution under this chapter, or either the federal deposit insurance corporation, or any successor federal deposit insurance agency, or the national credit union association, or any successor federal deposit insurance agency, has been appointed receiver.

#### **6-07.2-03. Notice of possession.**

1. Immediately upon taking possession of the business and property of an institution under section 6-07.2-01, the commissioner shall give notice by:
  - a. Causing the notice to be served upon the president or other executive officer in charge of the business of the institution;
  - b. Causing the notice to be provided to all correspondent banks of the institution. However, if the commissioner fails to provide the notice, the commissioner shall incur no liability for such failure to act; and
  - c. Causing the notice to be made public.
2. The rights and liabilities of an institution and of the institution's creditors, depositors, shareholders, and all other persons interested in the institution's estate, unless otherwise directed, must be fixed as of the date of the delivery of the notice of possession to the president or other executive officer actively

in charge of the business of the institution. In the case of mutual debts or mutual credits of equal priority between the institution and another person, the credits and debts must be setoff and the balance only must be allowed or paid. The right to setoff must be determined as of the date of delivery of the notice of possession of the institution to the president or other executive officer actively in charge of the business of the institution.

#### **6-07.2-04. Appointment of receiver - Restrictions on proceedings, liens, or credits - Bonding.**

1. After taking possession of the business and property of the institution, the commissioner may appoint the appropriate federal deposit insurance agency or other qualified party as the receiver of the closed institution. If the federal deposit insurance corporation or national credit union association accepts appointment as receiver, the federal deposit insurance corporation or national credit union association is not required to post bond.
2. Upon appointment as receiver, title to all assets of the institution vests in the receiver without the execution of any instruments of conveyance, assignment, transfer, or endorsement. If no other receiver is appointed as provided in this chapter, the commissioner shall act as receiver and has all of the powers and duties of a receiver as provided in this chapter.
3. Except as otherwise provided, the sole and exclusive right to liquidate and terminate the affairs of an institution is vested in the receiver appointed under this section, and another receiver, assignee, trustee, or liquidating agent may not be appointed by any court or any other person.
4. After the commissioner has taken possession of the business and property of an institution, a suit, action, or other proceeding at law or in equity may not be commenced or prosecuted against the institution upon any debt, obligation, claim, or demand. All such claims may be brought against the receiver.
5. A person holding any of the property or credits of the institution does not have a lien or charge against the property or credits for any payment, advance, or clearance made after the commissioner has taken possession. A lien may not attach to any of the assets or property of the institution by reason of the entry of any judgment recovered against the institution after the commissioner has taken possession of the institution's business and property.
6. Every receiver appointed by the commissioner, except a federal deposit insurance agency, before entering upon the discharge of the receiver's duties and before proceeding to liquidate the affairs of any institution, may be required by the commissioner to furnish a bond. Such bond must be approved as to form and amount by the commissioner. The cost of such bond must be paid from the assets of the institution being liquidated.

#### **6-07.2-05. Powers of receiver.**

The receiver of a closed institution may do the following:

1. Take possession of all books, records, and assets of the institution.
2. Collect all debts, claims, and judgments belonging to the institution and do such other acts as are necessary to preserve and liquidate the assets of the institution.

3. Execute in the name of the institution any instrument necessary or proper to effectuate the receiver's powers or perform the duties as receiver.
4. Initiate, pursue, and defend litigation involving any right, claim, interest, or liability of the institution.
5. Exercise any and all existing fiduciary functions of the institution as of the date of appointment as receiver.
6. Borrow money as necessary and secure the borrowings by the pledge or mortgage of assets. The repayment of money borrowed under this subsection and interest on the money borrowed under this section must be considered an expense of administration under section 6-07.2-09.
7. Abandon or convey title to any holder of a mortgage, deed of trust, security interest, or lien against property in which the institution has an interest if the receiver determines that to continue to claim the interest is burdensome and of no advantage to the institution or the institution's depositors, creditors, or shareholders.
8. Repudiate any leases or executory contracts to which the institution is a party in accordance with section 6-07.2-09.
9. Sell any and all real and personal property to compromise any debt, claim, or judgment due from the institution and discontinue any action or other proceedings pending.
10. Pay off all mortgages, deeds of trust, security agreements, and liens upon any real or personal property belonging to the institution and purchase at judicial sale or at sale authorized by court order, any real or personal property in order to protect the institution's equity in that property.
11. Sell in bulk the assets and liabilities of the institution.

**6-07.2-06. Sale of assets - Assumptions of deposit liabilities by new institution.**

The receiver may sell all or any part of the institution's assets to one or more other state or federally chartered depository institution or to a federal deposit insurance agency in the receiver's corporate capacity. The receiver may also borrow from a federal deposit insurance agency an amount necessary to facilitate the assumption of deposit liabilities by a newly chartered or existing state or federally chartered depository institution, assigning any part or all of the assets of the institution as security for the loan.

**6-07.2-07. Presentation of claims - Notice of claims procedure - Rejection of claims - Statute of limitations.**

1. All parties having claims against the closed institution shall present the claims of the parties supported by proof to the receiver within one hundred eighty days after the commissioner has taken possession. This period may be extended by written agreement between the claimant and the receiver. The receiver shall cause notice of the claims procedures prescribed by this section to be made public and mailed to each person whose name appears as a creditor upon books of the institution at the person's last address of record. Within one hundred eighty days following receipt of the claim, the receiver

shall notify in writing any claimant whose claim has been rejected. Notice is effective when mailed. A claimant whose claim has been rejected by the receiver may petition a court for a hearing on the claim within sixty days from the date the claim was rejected. The claim of a party against the closed institution must be disallowed, other than any portion of the claim which was allowed by the receiver, as of the end of the sixty-day period if the party having the claim fails to:

- a. Request an administrative review of any claim by the receiver in accordance with proper procedure; or
  - b. File suit on the claim, or continue an action commenced before the appointment of the receiver, before the end of the sixty-day period.
2. The disallowance is final, and the claimant has no further rights or remedies with respect to the claim.

#### **6-07.2-08. Claims filed after one hundred eighty-day claim period.**

A claim filed after the one hundred eighty-day claim period prescribed by section 6-07.2-07 and subsequently accepted by the receiver is entitled to share in the distribution of assets only to the extent of the undistributed assets in the hands of the receiver on the date the claim is accepted or allowed.

#### **6-07.2-09. Payment of claims.**

1. All claims against the institution's estate, proved to the receiver's satisfaction or approved by the circuit court, must be paid in the following order:
  - a. Administration expenses, including compensation of each regular officer or employee of the receiver for the time actually devoted to the liquidation of the institution at an amount not to exceed the compensation paid to the officer or employee for the performance of the officer's or employee's regular duties; actual expenses of each regular officer and employee necessarily incurred in the performance of the officer's or employee's duties; compensation and expenses of any special representative, assistant, accountant, agent, or attorney employed by the receiver; court costs; and if the commissioner is acting as receiver, such reasonable general overhead expenses as may be incurred by the commissioner in the liquidation of the affairs of the institution which shall be ascertained, determined, and fixed by the commissioner.
  - b. Claims given priority under other provisions of state or federal law.
  - c. Deposit obligations, except that notwithstanding sections 6-03-67 and 41-04-31, if a depositor is indebted to an insolvent bank, the insolvent bank has a right to setoff against the depositor's account.
  - d. Other general liabilities.
  - e. Debt subordinated to the claims of depositors and general creditors.
  - f. Equity capital securities.
2. Interest on a claim may not be paid until all claims within the same class have received the full principal amount of claim.

**6-07.2-10. Rejection of contracts and leases.**

1. Within one hundred eighty days after the date the commissioner has taken possession, the receiver may reject:
  - a. An executory contract to which the closed institution is a party without any further liability to the closed institution or the receiver; and
  - b. An obligation of the institution as a lessee of real or personal property.
2. The receiver's election to reject a lease does not create a claim for rent other than rent accrued to the date of termination.

**6-07.2-11. Subrogation of federal deposit insurance agency to right of depositors.**

If a federal deposit insurance agency pays or makes available for payment the insured deposit liabilities of a closed institution, the federal deposit insurance agency, whether or not the federal deposit insurance agency acts as receiver, must be subrogated by operation of law to all rights of depositors against the closed institution relating to claims for deposits so paid by the federal deposit insurance agency to the extent necessary to enable the federal deposit insurance agency, under federal law, to make insurance payments available to depositors of closed institutions.

**6-07.2-12. Appointment of successor fiduciary and representative proceedings.**

1. The receiver may appoint one or more successors to any or all of the rights, obligations, assets, deposits, agreements, and trusts held by the closed institution as trustee, administrator, executor, guardian, agent, and all other fiduciary or representative capacities. The approval may be obtained in connection with the proceedings authorized under section 6-07.2-06.
2. A successor's duties and obligations begin upon appointment to the same extent binding upon the closed institution and as though the successor had originally assumed the duties and obligations. Specifically, a successor must be appointed to administer trusteeships, administrations, executorships, guardianships, agencies, and other fiduciary or representative proceedings to which the closed institution is named or appointed in wills, whenever probated, or to which it is appointed by any other instrument or court order, or by operation of law.
3. This section does not impair any right of the grantor or beneficiaries of trust assets to secure the appointment of a substituted trustee or manager.
4. Within thirty days after appointment, a successor shall give written notice, insofar as practical, that the successor has been appointed in accordance with applicable law to all interested parties named in:
  - a. The books and records of the closed institution; and
  - b. Trust documents held by the successor.

**6-07.2-13. Notice concerning safekeeping and safe deposit boxes.**

The receiver shall cause notice to be mailed to the last address of record to the owners of any personal property in the possession of or held by a closed institution for safekeeping, and to all lessees of safe deposit boxes. The notice must require the intended recipients to appear and assert the claims of the recipients to the property within sixty days from the date of the notice. The receiver shall make such agreements or arrangements as may be necessary for the disposition of property held by the closed institution for safekeeping and the contents of safe deposit boxes, and for the termination of any leases or other contracts relating to the property or contents.

**6-07.2-14. Actions for enforcement or rights, demands, or claims vested in an institution or its shareholders of creditors.**

Notwithstanding any other provision of state law, the receiver may, within five years from the date of closing of the institution, institute and maintain, in the name of the receiver, any action or proceeding for the enforcement of any right, demand, or claim that is vested in the institution.

**6-07.2-15. Contents of articles of dissolution.**

If the proceedings described in this chapter have been completed, the receiver shall execute and file, in the manner provided in this section, articles of dissolution, setting forth the following information:

1. The name of the institution;
2. The place where the institution's main office was located;
3. The names and addresses of the directors and officers of the institution at the time the liquidation proceedings were begun;
4. A brief summary of the aggregate amount of general claims finally allowed against the institution, the order in which the claims were paid, and the aggregate amount of all other claims against the institution. A statement of the aggregate payments made on each of the groups of claims must be provided, referencing the orders of the receiver authorizing those payments and the current reports documenting such payments; and
5. A brief summary of the aggregate amount of payments made to the shareholders of the institution, whether of money or other property, and a reference to the orders of the receiver authorizing the payments and to the current reports in which documentation of the payments is made.

**6-07.2-16. Execution and filing of articles with department - Certificate of dissolution.**

1. The articles of dissolution must be executed in duplicate and presented in duplicate to the department of financial institutions.
  - a. Upon presentation of the articles of dissolution, the commissioner shall endorse the commissioner's approval upon each of the duplicate copies of the articles if the commissioner finds the articles conform to law.
  - b. The commissioner shall file one copy of the articles in the department and issue two certificates of dissolution. The commissioner shall file one

certificate of dissolution with the department and shall deliver the second to the receiver.

2. Upon the issuance of the certificate of dissolution, the institution is dissolved and its existence ceases. Upon the issuance of the certificate of dissolution, the receiver is authorized, as agent for the directors and shareholders of any subsidiary trust company, to file any and all documents with the secretary of state necessary to terminate the subsidiary trust company's corporate existence under applicable corporate law.

### **6-07.2-17. Emergency temporary suspension or conservatorship.**

1. If upon the examination or investigation of an institution regulated by the commissioner, the commissioner determines the laws are not being fully observed, that any irregularities are being practiced, or that the institution's capital has been or is in danger of being impaired, the commissioner shall give immediate notice of such determination to the officers and directors of the institutions. In addition, if it is deemed necessary in order to conserve the assets of the institution or to protect the interests of depositors and creditors of the institution, the commissioner may do any one or more of the following:
  - a. Temporarily suspend the right of the institution to receive any further deposits;
  - b. Temporarily close the bank, for a period not exceeding sixty days, which period may be further extended for one or more sixty-day periods as the commissioner may deem necessary;
  - c. Require the officers and directors of the bank to liquidate its outstanding loans insofar as required;
  - d. Recapitalize the institution;
  - e. Require that any irregularities be corrected promptly;
  - f. Require the institution to make reports, daily or at such other times as may be required to the commissioner; and
  - g. Without examination, close or appoint a receiver to operate, for such period as the commissioner may deem necessary, an institution facing an emergency due to withdrawal of deposits, a liquidity event in which the institution is unable to continue operations, a cyber or technology related incident, or otherwise, or, without closing the institution, grant the institution the right to suspend or limit the withdrawal of deposits, for such period as the commissioner may determine.
2. If an institution fails or refuses to comply with any such order of the commissioner, or if the commissioner determines a receiver for the institution should be appointed, the commissioner may apply for the appointment of a receiver to take charge of the business affairs and assets of the institution and to wind up the institution's affairs as provided in this chapter.
3. A bank or credit union may request a hearing before the state banking board or state credit union board within ten days of the emergency temporary suspension or conservatorship to review the factual basis used to issue the emergency temporary suspension or conservatorship. The decision made by

the state banking board or state credit union board during the hearing is final. If a hearing is not requested, the initial decision of the commissioner is final.

### **6-07.2-18. Voluntary liquidation of a bank.**

1. An application for approval to voluntarily liquidate the affairs of a bank must be submitted to the commissioner in the manner and form that the commissioner may prescribe, must include the information set forth in this section, and must contain such additional information the commissioner may require. The application must include duplicate copies of a resolution authorizing the dissolution and duplicate copies of a certificate, verified by the applicant's president or chief executive officer or a vice president, stating the facts pertaining to the resolution and that the applicant's liabilities have been paid in full. Each duplicate certificate must have annexed to the duplicate, over the official signatures, evidence showing:
  - a. The date on which the resolution was authorized by the affirmative vote of the holders of at least a simple majority of the outstanding shares entitled to vote on the resolution;
  - b. The number of shares of each class entitled to vote on the resolution which were outstanding on the date of the stockholders' meeting;
  - c. The number of shares of each class entitled to vote on the resolution whose owners were present in person or by proxy;
  - d. The number of shares of each class voted for and against the resolution; and
  - e. The manner in which the meeting was called and the time and manner of giving notice, with a certification that the meeting was lawfully called and held.
2. Upon receipt of the application, the commissioner shall investigate the merits of the application. If the commissioner is satisfied the application is complete and all applicable provisions of law have been complied with, the commissioner shall cause an examination to be made of the applicant institution for the purpose of verifying the payment of all the applicant's liabilities. If the examination satisfies the commissioner that all of the applicant's liabilities have been paid, the commissioner shall endorse one copy of the certificate with the commissioner's statement that the institution is voluntarily liquidating. The return of the endorsed copy of the certificate operates to free the institution from further examination and to authorize the institution, under the original corporate name of the institution, to sue and be sued, to execute conveyances and other instruments, to take, hold, and own property, and to do all such other things as may be necessary to realize upon the institution's remaining assets for the pro rata benefit of the institution's stockholders, but not to engage or continue in any new or other business, under the institution's charter or otherwise. The liquidation must proceed as expeditiously as possible, and upon conclusion, the institution shall surrender its charter. In lieu of continuing the liquidation under the original corporate name, the institution may transfer the remaining assets to a trustee agreed upon by the stockholders by a majority vote and upon so doing shall surrender the institution's charter.

**SECTION 10. REPEAL.** Chapter 6-07 of the North Dakota Century Code is repealed.

Approved March 31, 2021

Filed April 1, 2021

## CHAPTER 78

### SENATE BILL NO. 2197

(Senators Klein, Holmberg)  
(Representative Lefor)

AN ACT to amend and reenact sections 6-01-07.1 and 54-10-22.1 of the North Dakota Century Code, relating to confidentiality of facts and information obtained or created by the commissioner of financial institutions and the department of financial institutions.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 6-01-07.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **6-01-07.1. Records - Confidential.**

1. All facts and information obtained or created by the commissioner or the department in the following ways are confidential, except as provided in subsections 2 through 78:
  - a. In the course of examining financial institutions, credit unions, and other licensed entities under the supervision of the commissioner, or in the course of receiving audit reports, reports of examining committee and reports of annual meetings of stockholders and directors of such institutions and licensees. The reports of examination may be made available to the financial institution's or licensee's board of directors, or the board's specifically authorized agents or representatives, but the reports remain the property of the department.
  - b. From the federal reserve system, federal deposit insurance corporation, federal home loan bank board, national credit union administration, or any state bank or credit union supervisors or supervisors of other licensed entities of other states.
  - c. In the course of investigating an institution under the supervision of, or licensed by, the commissioner, until such investigation is complete.
  - d. In the course of a special investigation being carried out at the request of the governor or any court.
  - e. (1) In the form or nature of an application for a charter, license, or permission which meets any of the following criteria:
    - (1)(a) Trade secrets and commercial or financial information.
    - (2)(b) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

- (3)(c) Information contained in the application form which is in the nature of examination report information.
- (2) Determination of what required application information falls within each category must be made by the body before which the application is brought.
- f. In the form of a complaint or comment from the public regarding a financial institution, credit union, or other licensed entity under the supervision of the commissioner, unless the commissioner is providing aggregate, nonspecific information.
2. When the commissioner is required or permitted by law to report upon or take special action regarding the affairs of any institution or licensed entity under the commissioner's supervision, the commissioner shall divulge only such information specified in subsection 1 as is necessary and sufficient for the action taken or to be taken.
  3. The commissioner may furnish information to the attorney general, other state agencies, any prosecuting officials requiring the information for use in pursuit of official duties, and legislative investigations under chapter 54-03.2, if the commissioner determines necessary or proper to the enforcement of federal laws or the laws of this state or in the best interest of the public. Information furnished by the commissioner to any third party which is confidential in the commissioner's possession remains confidential in the possession of the third party. Information received by the commissioner from any third party which is confidential in the third party's possession remains confidential in the commissioner's possession.
  4. The commissioner may furnish information and enter sharing agreements as to matters of mutual interest to an official or examiner of the federal reserve system, federal deposit insurance corporation, federal home loan bank board, national credit union administration, office of thrift supervision, comptroller of the currency, any other federal government agency, insurance commissioner, office of the securities commissioner, regulatory trade associations, any state bank or credit union supervisors or supervisors of other licensed entities of other states, or a nationwide multistate licensing system.
  5. Information regarding complaints or comments from the public may be provided to other regulatory agencies, to the individual in response to the complaint or comment, or to the subject financial institution, credit union, or other licensed entity under the supervision of the commissioner.
  6. The commissioner shall not be required to disclose the name of any debtor of any financial institution, credit union, or licensed entity reporting to or under the supervision of the commissioner or anything relative to the private accounts, ownership, or transactions of any such institution, or any fact obtained in the course of any examination thereof, except as herein provided. All disclosures must be limited to only those documents directly relevant to the inquiry at issue.
- ~~6-7.~~ This section does not limit the right of access of stockholders, shareholders, depositors, creditors, and sureties on bonds to specified department records as, and to the extent, provided by section 6-01-07.

~~7-8.~~ The standards for confidentiality and disclosure by the commissioner set forth in this section, except the standard of the exercise of discretion, which shall only be exercised by the commissioner, apply equally to the state banking board, the state credit union board, and all department employees.

**SECTION 2. AMENDMENT.** Section 54-10-22.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-10-22.1. State auditor's access to information relating to operations of governmental entities subject to audit.**

Notwithstanding any other specific sections of law, the state auditor and persons employed by the state auditor, when necessary in conducting an audit, shall have access to all information relating to operations of all governmental units or component units subject to audit except active investigatory work product of the attorney general as defined in section 44-04-19.1 and financial records and estate planning records a donor provides to a nonprofit organization affiliated with an institution under the control of the state board of higher education which provides support to and is organized and operated for the benefit of the institution. Except for active investigatory work product of the attorney general as defined in section 44-04-19.1 and, tax records as described in section 54-10-24, and all facts and information obtained or created by the department of financial institutions under subsection 1 of section 6-01-07.1, the state auditor may inspect any state agency's books, papers, accounts, or records that may be relevant to an ongoing audit of any other state agency or computer system audit. The state auditor and persons employed by the state auditor examining any information, which is confidential by law, shall guard the secrecy of such information except when otherwise directed by judicial order or as is otherwise provided by law.

Approved March 31, 2021

Filed April 1, 2021

## CHAPTER 79

### HOUSE BILL NO. 1187

(Representatives Louser, Boschee, Ertelt, Mock, Pollert, Rohr, Skroch)  
(Senators Heckaman, Klein, Sorvaag, Wardner)

AN ACT to create and enact section 6-09-46.2 of the North Dakota Century Code, relating to creation of a Bank of North Dakota rebuilders loan program and a rebuilders permanent loan fund; to repeal sections 6-09-46 and 6-09-46.1 of the North Dakota Century Code, relating to a rebuilders loan program, a rebuilders home loan program, and a rebuilders home loan fund; to provide a continuing appropriation; and to provide for a transfer.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Section 6-09-46.2 of the North Dakota Century Code is created and enacted as follows:

#### **6-09-46.2. Rebuilders loan program - Rebuilders permanent loan fund - Continuing appropriation.**

1. The Bank of North Dakota shall develop a rebuilders loan program to make or participate in loans to North Dakota residents affected by extraordinary losses as a result of a presidentially declared disaster or governor-declared disaster or emergency in the state. Under the rebuilders loan program the Bank shall develop and implement specific loan programs to respond to the specific needs resulting from a disaster or emergency. The Bank may fund the loan from any available funding in the rebuilders permanent loan fund and may accept private sector donations and funds from the federal government.
2. Upon request of the Bank of North Dakota, the governor shall furnish the Bank with information relating to the nature and amount of state and local resources that have been or will be committed to alleviating the results of the disaster or emergency, an estimate of the amount and severity of the damage and the impact on the private and public sectors, and an estimate of the type and amount of assistance needed.
3. To apply for a loan under the program, a person shall apply to the originating financial institution. Upon Bank of North Dakota approval of an application, the Bank shall make a loan in accordance with the loan program established under this section. The Bank shall establish a loan application period, which may not exceed a period of eighteen months from the date of the declaration of the disaster or emergency.
4. Excluding the rebuilders and rebuilders home loans transferred to the fund, the Bank of North Dakota shall deposit in the fund all principal and interest paid on the loans made from the fund. The Bank may deduct from interest payments received on a loan under the program a service fee for administering the fund for the Bank and the originating financial institution. The Bank shall contract with a certified public accounting firm to audit the fund as necessary. The cost of the audit, and any other actual costs incurred by the Bank on behalf of the fund, must be paid by the fund.

5. There is created in the state treasury the rebuilders permanent loan fund administered by the Bank of North Dakota. The fund consists of all moneys transferred to the fund by the legislative assembly, interest on moneys in the fund, and payments to the fund of principal and interest on loans made from the fund. All moneys in the fund are appropriated to the Bank on a continuing basis for the rebuilders loan program.
6. If approved by the industrial commission, the fund may borrow from the Bank of North Dakota to provide funding for loans under this section. A loan made to the fund by the Bank must be repaid with principal and interest payment received by the rebuilders permanent loan fund or with moneys appropriated by the legislative assembly.
7. The Bank of North Dakota shall adopt policies to implement this section.

**SECTION 2. REPEAL.** Sections 6-09-46 and 6-09-46.1 of the North Dakota Century Code are repealed.

**SECTION 3. TRANSFER - REBUILDERS PERMANENT LOAN FUND.** On July 1, 2021, the Bank of North Dakota shall transfer any outstanding loans and other moneys in the rebuilders home loan and rebuilder loan programs to the rebuilders permanent loan fund. Principal and interest payments from the rebuilders and rebuilders home loans that are transferred to the rebuilders permanent loan fund must be used to replenish the Bank's current earnings and undivided profits and to repay the state general fund pursuant to section 3 of chapter 83 of the 2013 Session Laws and subsection 5 of section 20 of chapter 14 of the 2019 Session Laws. The Bank shall transfer \$30,374,209 in loans made as part of the small employee loan fund established by the industrial commission to provide assistance during the SARS-CoV-2 pandemic to the rebuilders permanent loan program established under this Act. Payments of principal and interest from the small employee loans that are transferred to the rebuilders permanent loan fund must be deposited in the rebuilders permanent loan fund. The Bank shall transfer the remaining \$19,625,791, designated under the small employee loan fund to the rebuilders permanent loan fund in the amounts and at the times determined by the Bank.

Approved April 12, 2021

Filed April 13, 2021

## CHAPTER 80

### HOUSE BILL NO. 1431

(Representatives Pollert, Schmidt)  
(Senators Sorvaag, Wardner)

AN ACT to create and enact a new section to chapter 6-09 and a new section to chapter 6-09.4 of the North Dakota Century Code, relating to a water infrastructure revolving loan fund and bonded debt repayments; to amend and reenact subsection 1 of section 6-09-49, and sections 6-09.4-06 and 6-09.4-10 of the North Dakota Century Code, relating to interest rates for infrastructure revolving loans, borrowing and lending authority of the public finance authority, and reserve funds associated with bonds; to repeal chapter 6-09.5 and section 61-02-78 of the North Dakota Century Code, relating to a community water development fund and an infrastructure revolving loan fund within the resources trust fund; to provide an appropriation; to provide a continuing appropriation; to provide for a transfer; to provide for a contingent transfer; to provide a bond issue limit; and to provide a loan repayment.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>35</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 6-09-49 of the North Dakota Century Code is amended and reenacted as follows:

1. The infrastructure revolving loan fund is a special fund in the state treasury from which the Bank of North Dakota shall provide loans to political subdivisions, the Garrison Diversion Conservancy District, and the Lake Agassiz water authority for essential infrastructure projects. The Bank shall administer the infrastructure revolving loan fund. The maximum term of a loan made under this section is thirty years. A loan made from the fund under this section must have an interest rate that does not exceed two percent per year starting at two percent per year and increasing by one percent every five years, up to a maximum rate of five percent per year.

<sup>36</sup> **SECTION 2.** A new section to chapter 6-09 of the North Dakota Century Code is created and enacted as follows:

#### Water infrastructure revolving loan fund - State water commission - Continuing appropriation.

1. There is created in the state treasury the water infrastructure revolving loan fund to provide loans for water supply, flood protection, or other water development and water management projects. The fund consists of moneys transferred into the fund, interest earned on moneys in the fund, and principal and interest payments to the fund. All moneys in the fund are appropriated to

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<sup>35</sup> Section 6-09-49 was also amended by section 16 of Senate Bill No. 2014, chapter 42, and section 17 of Senate Bill No. 2014, chapter 42.

<sup>36</sup> Section 6-09-49.2 was amended by section 18 of Senate Bill No. 2014, chapter 42.

- the Bank of North Dakota on a continuing basis for loan disbursements and administrative costs.
2. The state water commission shall approve eligible projects for loans from the water infrastructure loan fund. The state water commission shall consider the following when evaluating eligible projects:
    - a. A description of the nature and purposes of the proposed infrastructure project, including an explanation of the need for the project, the reasons why the project is in the public interest, and the overall economic impact of the project.
    - b. The estimated cost of the project, the amount of loan funding requested, and other proposed sources of funding.
    - c. The extent to which completion of the project will provide a benefit to the state or regions within the state.
  3. Projects not eligible for the state revolving funds under chapters 61-28.1 and 61-28.2 must be given priority for loans from the water infrastructure revolving loan fund.
  4. In consultation with the state water commission, the Bank of North Dakota shall develop policies for the review and approval of loans under this section. Loans made under this section must be made at the same interest rate as the revolving loan funds established under chapters 61-28.1 and 61-28.2.
  5. The Bank of North Dakota shall manage and administer loans from the water infrastructure loan fund. The Bank shall deposit in the fund all principal and interest paid on loans made from the fund. Annually, the Bank may deduct one-quarter of one percent of the outstanding loan balance as a service fee for administering the water infrastructure revolving loan fund. The Bank shall contract with a certified public accounting firm to audit the fund. The cost of the audit must be paid from the fund.

<sup>37</sup> **SECTION 3. AMENDMENT.** Section 6-09.4-06 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.4-06. Lending and borrowing powers generally.**

1. The public finance authority may lend money to political subdivisions or other contracting parties through the purchase or holding of municipal securities which, in the opinion of the attorney general, are properly eligible for purchase or holding by the public finance authority under this chapter or chapter 40-57 and for purposes of the public finance authority's capital financing program the principal amount of any one issue does not exceed five hundred thousand dollars. However, the public finance authority may lend money to political subdivisions through the purchase of securities issued by the political subdivisions through the capital financing program without regard to the principal amount of the bonds issued, if the industrial commission approves a resolution that authorizes the public finance authority to purchase the securities. The capital financing program authorizing resolution must state that the industrial commission has determined that private bond markets will not be

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<sup>37</sup> Section 6-09.4-06 was also amended by section 20 of Senate Bill No. 2014, chapter 42.

responsive to the needs of the issuing political subdivision concerning the securities or, if it appears that the securities can be sold through private bond markets without the involvement of the public finance authority, the authorizing resolution must state reasons for the public finance authority's involvement in the bond issue. The public finance authority may hold such municipal securities for any length of time it finds to be necessary. The public finance authority, for the purposes authorized by this chapter or chapter 40-57, may issue its bonds payable solely from the revenues available to the public finance authority which are authorized or pledged for payment of public finance authority obligations, and to otherwise assist political subdivisions or other contracting parties as provided in this chapter or chapter 40-57.

2. The public finance authority may lend money to the Bank of North Dakota under terms and conditions requiring the Bank to use the proceeds to make loans for agricultural improvements that qualify for assistance under the revolving loan fund program established by chapter 61-28.2.
3. The public finance authority may transfer money to the Bank of North Dakota for allocations to infrastructure projects and programs. Bonds issued for these purposes are payable in each biennium solely from amounts the legislative assembly may appropriate for debt service for any biennium or from a reserve fund established for the bonds. This section may not be construed to require the state to appropriate funds sufficient to make debt service payments with respect to the bonds or to replenish a related reserve fund. The bonds are not a debt of the Bank of North Dakota or the state. The full faith, credit, and taxing powers of the state are not pledged to the payment of the bonds. As of the date appropriated funds and reserves are not sufficient to pay debt service on the bonds, the obligation of the public finance authority with respect to the bonds must terminate, and the bonds are no longer outstanding. In addition to providing funds for the transfers, the public finance authority may use the bond proceeds to pay the costs of issuance of the bonds and establish a reserve fund for the bonds.
4. Bonds of the public finance authority issued under this chapter or chapter 40-57 are not in any way a debt or liability of the state and do not constitute a loan of the credit of the state or create any debt or debts, liability or liabilities, on behalf of the state, or constitute a pledge of the faith and credit of the state, but all such bonds are payable solely from revenues pledged or available for their payment as authorized in this chapter. Each bond must contain on its face a statement to the effect that the public finance authority is obligated to pay such principal or interest, and redemption premium, if any, and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or the interest on such bonds. Specific funds pledged to fulfill the public finance authority's obligations are obligations of the public finance authority.
5. All expenses incurred in carrying out the purposes of this chapter or chapter 40-57 are payable solely from revenues or funds provided or to be provided under this chapter or chapter 40-57 and nothing in this chapter may be construed to authorize the public finance authority to incur any indebtedness or liability on behalf of or payable by the state.

**SECTION 4. AMENDMENT.** Section 6-09.4-10 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.4-10. Reserve fund.**

1. The public finance authority shall establish and maintain a reserve fund in which there must be deposited all moneys appropriated by the state for the purpose of the fund, all proceeds of bonds required to be deposited therein by terms of any contract between the public finance authority and its bondholders or any resolution of the public finance authority with respect to the proceeds of bonds, any other moneys or funds of the public finance authority which it determines to deposit therein, any contractual right to the receipt of moneys by the public finance authority for the purpose of the fund, including a letter of credit or similar instrument, and any other moneys made available to the public finance authority only for the purposes of the fund from any other source or sources. Moneys in the reserve fund must be held and applied solely to the payment of the interest on and the principal of bonds and sinking fund payments as the same become due and payable and for the retirement of bonds, including payment of any redemption premium required to be paid when any bonds are redeemed or retired prior to maturity. Moneys in the reserve fund may not be withdrawn therefrom if the withdrawal would reduce the amount in the reserve fund to an amount less than the required debt service reserve, except for payment of interest then due and payable on bonds and the principal of bonds then maturing and payable and sinking fund payments and for the retirement of bonds in accordance with the terms of any contract between the public finance authority and its bondholders and for the payments on account of which interest or principal or sinking fund payments or retirement of bonds, other moneys of the public finance authority are not then available in accordance with the terms of the contract. The required debt service reserve must be an aggregate amount equal to at least the largest amount of money required by the terms of all contracts between the public finance authority and its bondholders to be raised in the then current or any succeeding calendar year for the payment of interest on and maturing principal of outstanding bonds, and sinking fund payments required by the terms of any contracts to sinking funds established for the payment or redemption of the bonds.
2. If the establishment of the reserve fund for an issue or the maintenance of an existing reserve fund at a required level under this section would necessitate the investment of all or any portion of a new reserve fund or all or any portion of an existing reserve fund at a restricted yield, because to not restrict the yield may cause the bonds to be taxable under the Internal Revenue Code, then at the discretion of the public finance authority no reserve fund need be established prior to the issuance of bonds or the reserve fund need not be funded to the levels required by other subsections of this section or an existing reserve fund may be reduced.
3. No bonds may be issued by the public finance authority unless there is in the reserve fund the required debt service reserve for all bonds then issued and outstanding and the bonds to be issued. Nothing in this chapter prevents or precludes the public finance authority from satisfying the foregoing requirement by depositing so much of the proceeds of the bonds to be issued, upon their issuance, as is needed to achieve the required debt service reserve. The public finance authority may at any time issue its bonds or notes for the purpose of providing any amount necessary to increase the amount in the reserve fund to the required debt service reserve, or to meet such higher or additional reserve as may be fixed by the public finance authority with respect to such fund.

4. In order to assure the maintenance of the required debt service reserve, there shall be appropriated by the legislative assembly and paid to the public finance authority for deposit in the reserve fund, such sum, if any, as shall be certified by the industrial commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve. However, the commission may approve a resolution for the issuance of bonds, as provided by section 6-09.4-06, which states in substance that this subsection is not applicable to the required debt service reserve for bonds issued under that resolution.
5. If the maturity of a series of bonds of the public finance authority is three years or less from the date of issuance of the bonds, the public finance authority may determine that no reserve fund need be established for that respective series of bonds. If such a determination is made, holders of that respective series of bonds may have no interest in or claim on existing reserve funds established for the security of the holders of previously issued public finance authority bonds, and may have no interest in or claim on reserve funds established for the holders of subsequent issues of bonds of the public finance authority.
6. The industrial commission may determine that this section is inapplicable in whole or in part for bonds issued under section:
  - a. Section 6-09.4-06;
  - b. Section 6-09.4-24; or under the
  - c. The public finance authority's state revolving fund program.

**SECTION 5.** A new section to chapter 6-09.4 of the North Dakota Century Code is created and enacted as follows:

**Debt service requirements - Bonds for infrastructure projects and programs.**

Each biennium, the public finance authority shall request from the legislative assembly an appropriation from the general fund, derived from legacy fund earnings, Bank of North Dakota profits, or other sources to meet the debt service requirements for bonds issued by the authority for allocations to infrastructure projects and programs.

**SECTION 6. REPEAL.** Chapter 6-09.5 and section 61-02-78 of the North Dakota Century Code are repealed.

**SECTION 7. PUBLIC FINANCE AUTHORITY - BOND ISSUE LIMITATION - BANK OF NORTH DAKOTA - APPROPRIATION.**

1. Pursuant to the bonding authority under section 6-09.4-06, the public finance authority may issue up to \$680,000,000 of bonds for transfer to the Bank of North Dakota for allocations to infrastructure projects and programs, for the biennium beginning July 1, 2021, and ending June 30, 2023.
2. The term of any bonds issued under this section may not exceed twenty years. The public finance authority may issue bond anticipation notes or borrow from the Bank to support the allocations to infrastructure projects and programs prior to a bond issue. The public finance authority shall make

available up to ten percent of the bonds for sale directly to North Dakota residents and financial institutions.

3. After payment of any issuance costs or any transfers to a reserve fund, \$680,000,000 from the bond proceeds issued by the public finance authority is appropriated to the Bank of North Dakota for allocations to infrastructure projects and programs, for the biennium beginning July 1, 2021, and ending June 30, 2023, as follows:
  - a. \$435,500,000 for the Fargo diversion project;
  - b. \$74,500,000 to the resources trust fund;
  - c. \$50,000,000 to the infrastructure revolving loan fund under section 6-09-49;
  - d. \$70,000,000 to the highway fund; and
  - e. \$50,000,000 to North Dakota state university, which is appropriated to North Dakota state university, for an agriculture products development center including a northern crops institute project.

**SECTION 8. RESOURCES TRUST FUND - LOAN REPAYMENT.** The state water commission shall use the bond proceeds allocated to the resources trust fund under section 7 of this Act to repay loans issued to the western area water supply authority from the resources trust fund.

**SECTION 9. APPROPRIATION - RESOURCES TRUST FUND.** There is appropriated out of any moneys in the resources trust fund in the state treasury, not otherwise appropriated, the sum of \$74,500,000, or so much of the sum as may be necessary, to the state water commission for Mouse River flood control, for the biennium beginning July 1, 2021, and ending June 30, 2023.

**SECTION 10. APPROPRIATION - HIGHWAY FUND - CONTINGENT TRANSFER.** There is appropriated out of any moneys in the highway fund in the state treasury, not otherwise appropriated, the sum of \$70,000,000, or so much of the sum as may be necessary, derived from bond proceeds to the department of transportation for state highway bridge projects and for matching federal funds that may become available, for the biennium beginning July 1, 2021, and ending June 30, 2023. Of the \$70,000,000, \$35,000,000 is designated for state highway bridge projects, and \$35,000,000 is designated for matching federal funds that may become available for state highway projects in excess of the federal funds appropriated to the department of transportation as part of its 2021-23 biennial budget. By October 1, 2022, the director of the department of transportation shall certify to the office of management and budget the amount of funding committed to matching excess federal funds from the \$35,000,000 provided under this section. If the amount committed is less than \$35,000,000, the office of management and budget shall transfer any uncommitted amounts to the infrastructure revolving loan fund under section 6-09-49.

**SECTION 11. TRANSFER - WATER PROJECT LOAN FUNDS.** The Bank of North Dakota shall transfer all outstanding loans and moneys in the community water facility loan fund and all outstanding loans and moneys in the infrastructure revolving loan fund within the resources trust fund to the water infrastructure revolving loan fund on July 1, 2021.

Approved April 21, 2021

Filed April 21, 2021

## CHAPTER 81

### HOUSE BILL NO. 1425

(Representatives Nathe, D. Anderson, Bosch, Headland, Howe, Lefor, Mock, Porter)  
(Senators Hogue, Meyer, Bell, Wardner)

AN ACT to create and enact section 6-09-49.1 and a new section to chapter 21-10 of the North Dakota Century Code, relating to the legacy infrastructure loan fund and the state investment board; to amend and reenact sections 21-10-02 and 21-10-11 of the North Dakota Century Code, relating to the state investment board and the legacy and budget stabilization fund advisory board; and to provide a continuing appropriation.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Section 6-09-49.1 of the North Dakota Century Code is created and enacted as follows:

##### **6-09-49.1. Legacy infrastructure loan fund - Continuing appropriation.**

1. The legacy infrastructure loan fund is a special fund in the state treasury from which the Bank of North Dakota shall provide loans to political subdivisions, the Garrison Diversion Conservancy District, and the Lake Agassiz water authority for eligible infrastructure projects as authorized in this section.
2. The Bank of North Dakota may adopt policies and establish guidelines to administer the legacy infrastructure loan fund in accordance with this section.
3. A loan made from the legacy infrastructure loan fund must have an interest rate that does not exceed two percent per year. The maximum term of a loan under this section is the lesser of thirty years or the useful life of the project.
4. The Bank of North Dakota shall transfer all payments of principal and interest paid on loans made from the legacy infrastructure loan fund to the legacy fund. The Bank may use a portion of the interest paid on the outstanding loans as a servicing fee to pay for administrative costs, which may not exceed one-half of one percent of the amount of the outstanding loans.
5. An applicant shall issue an evidence of indebtedness as authorized by law.
6. When processing political subdivision loan applications under this section, the Bank of North Dakota shall calculate the maximum outstanding loan amount per qualified applicant. The maximum outstanding loan amount for infrastructure projects under subsection 7 is forty million dollars. The Bank shall consider the ability of the applicant to repay the loan while processing the application and shall issue loans only to applicants that provide reasonable assurance of sufficient future income to repay the loan.
7. Eligible infrastructure projects under this subsection are capital projects to construct new infrastructure or to replace infrastructure and which provide the fixed installations necessary for the function of a political subdivision. Capital

construction projects exclude routine maintenance and repair projects, but include:

- a. Water treatment plants;
  - b. Wastewater treatment plants;
  - c. Sewerlines and waterlines, including lift stations and pumping stations;
  - d. Water storage systems, including dams, water tanks, and water towers;
  - e. Storm water infrastructure, including curb and gutter construction;
  - f. Road and bridge infrastructure, including paved and unpaved roads and bridges;
  - g. Airport infrastructure;
  - h. Electricity transmission infrastructure;
  - i. Natural gas transmission infrastructure;
  - j. Communications infrastructure;
  - k. Emergency services facilities, excluding hospitals;
  - l. Essential political subdivision building and infrastructure; and
  - m. The Red River valley water supply project.
8. The department of transportation shall approve county road and bridge projects for purposes of loans under this section and may adopt policies for the review and approval of projects under this section.
9. For purposes of loans under this subsection, the state water commission shall review and approve eligible projects to construct new water-related infrastructure or to replace existing water-related infrastructure which provide the fixed installations necessary for the function of a political subdivision. The state water commission may adopt policies for the review and approval of projects under this section. Capital construction projects exclude routine maintenance and repair projects, but include:
- a. Flood control;
  - b. Conveyance projects;
  - c. Rural water supply;
  - d. Water supply; and
  - e. General water management.

**SECTION 2.** A new section to chapter 21-10 of the North Dakota Century Code is created and enacted as follows:

**Prudent investor rule - Exception.**

Notwithstanding section 21-10-07, for purposes of investment of the legacy fund, the state investment board shall give preference to qualified investment firms and financial institutions with a presence in the state.

**SECTION 3. AMENDMENT.** Section 21-10-02 of the North Dakota Century Code is amended and reenacted as follows:

**21-10-02. Board - Powers and duties.**

1. The board is charged with the investment of the funds enumerated in section 21-10-06. It shall approve general types of securities for investment by these funds and set policies and procedures regulating securities transactions on behalf of the various funds. Representatives of the funds enumerated in section 21-10-06 may make recommendations to the board in regard to investments.
2. The board or its designated agents must be custodian of securities purchased on behalf of funds under the management of the board.
3. The board may appoint an investment director or advisory service, or both, who must be experienced in, and hold considerable knowledge of, the field of investments. The investment director or advisory service shall serve at the pleasure of the board. The investment director or advisory service may be an individual, corporation, limited liability company, partnership, or any legal entity which meets the qualifications established herein. The board may authorize the investment director to lend securities held by the funds. These securities must be collateralized as directed by the board.
4. The board may create investment fund pools in which the funds identified in section 21-10-06 may invest.
5. For purposes of investment of the legacy fund, the board shall give preference to investment firms and financial institutions with a presence in the state.

**SECTION 4. AMENDMENT.** Section 21-10-11 of the North Dakota Century Code is amended and reenacted as follows:

**21-10-11. Legacy and budget stabilization fund advisory board.**

1. The legacy and budget stabilization fund advisory board is created to develop recommendations for the investment of funds in the legacy fund and the budget stabilization fund to present to the state investment board.
2. The goal of investment for the legacy fund is principal preservation while maximizing total return and to provide a direct benefit to the state by investing a portion of the principal in the state. Preference must be given to qualified investment firms and financial institutions with a presence in the state for investment of the legacy fund.
3. The board shall determine the asset allocation for the investment of the principal of the legacy fund including:
  - a. A target allocation of ten percent to fixed income investments within the state, of which:

- (1) Up to forty percent must be targeted for infrastructure loans to political subdivisions under section 6-09-49.1. The net return to the legacy fund under this paragraph must be fixed at a target rate of one and one-half percent.
  - (2) Up to sixty percent, with a minimum of four hundred million dollars, must be designated to the Bank of North Dakota's certificate of deposit match program with an interest rate fixed at the equivalent yield of United States treasury bonds having the same term, up to a maximum term of twenty years; and
  - (3) Any remaining amounts must be designated for other qualified fixed income investments within the state.
- b. A target allocation of ten percent to equity investments in the state, of which at least three percent may be targeted for investment in one or more equity funds, venture capital funds, or alternative investment funds with a primary strategy of investing in emerging or expanding companies in the state. Equity investments under this subdivision must:
- (1) Be managed by qualified investment firms, financial institutions, or equity funds which have a strategy to invest in qualified companies operating or seeking to operate in the state and which have a direct connection to the state; and
  - (2) Have a benchmark investment return equal to the five-year average net return for the legacy fund, excluding in-state investments.
4. The board consists of two members of the senate appointed by the senate majority leader, two members of the house of representatives appointed by the house majority leader, the director of the office of management and budget or designee, the president of the Bank of North Dakota or designee, and the tax commissioner or designee. The board shall select a chairman and must meet at the call of the chairman.
- 4-5. The board shall report at least semiannually to the budget section.
- 5-6. Legislative members are entitled to receive compensation and expense reimbursement as provided under section 54-03-20 and reimbursement for mileage as provided by law for state officers. The legislative council shall pay the compensation and expense reimbursement for the legislative members.
- 6-7. The legislative council shall provide staff services to the legacy and budget stabilization fund advisory board.
- 7-8. The staff and consultants of the state retirement and investment office shall advise the board in developing asset allocation and investment policies.
- 8-9. The board shall develop a process to select a member of the board to serve on the state investment board in a nonvoting capacity.

Approved April 8, 2021

Filed April 8, 2021

## CHAPTER 82

### SENATE BILL NO. 2230

(Senators Wanzek, Elkin, Klein)  
(Representatives Brandenburg, Headland, Howe)

AN ACT to amend and reenact section 6-09.7-05 of the North Dakota Century Code, relating to the use of the strategic investment and improvements fund.

#### **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 6-09.7-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **6-09.7-05. Establishment and maintenance of adequate guarantee funds - Use of strategic investment and improvements fund.**

The Bank of North Dakota shall establish and at all times maintain an adequate guarantee reserve fund in a special account in the Bank. The Bank may request the director of the office of management and budget to transfer funds from the strategic investment and improvements fund created by section 15-08.1-08 to maintain one hundred percent of the guarantee reserve fund balance. Transfers from the strategic investment and improvements fund may not exceed a total of ~~fifty~~fiftyeight million dollars. Moneys in the guarantee reserve fund are available to reimburse lenders for guaranteed loans in default. The securities in which the moneys in the reserve fund may be invested must meet the same requirements as those authorized for investment under the state investment board. The income from such investments must be made available for the costs of administering the state guarantee loan program and income in excess of that required to pay the cost of administering the program must be deposited in the reserve fund. The amount of reserves for all guaranteed loans must be determined by a formula that will assure, as determined by the Bank, an adequate amount of reserve.

Approved April 19, 2021

Filed April 20, 2021